IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7620 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHENDRABHAI BHIMJIBHAI MADHAD

Versus

BHANUMATI MAHENDRABHAI MADHAD

Appearance:

1. Special Civil Application No. 7620 of 2002

M/S THAKKAR ASSOC. for Petitioner No. 1

MR RM PARMAR for Respondent No. 1

UNSERVED-REFUSED (N) for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 27/08/2004

ORAL JUDGEMENT

#. By filing this petition, the petitioner has

challenged the order passed by the learned 6th Joint Civil Judge (SD), Rajkot dated 6.10.1999, by which the learned Civil Judge has directed the petitioner husband to pay Rs.1000/- in all to the wife and three minor children, as interim maintenance.

#. Learned counsel for the petitioner submitted that, over and above the amount awarded by the learned Civil Judge, the Magistrate has also awarded Rs.400/- to the wife and Rs.250/- to each of the three minor children under Section 125 of the Code of Criminal Procedure. It is submitted that, at the time of granting interim alimony, the trial Court should have taken into account the said amount granted by the Magistrate. However, it is required to be noted that the order of the Civil Court is of the year 1999 and the order of the Magistrate is of August, 1997. The learned Civil Judge has specifically found that the wife is not in a position to maintain herself properly with such a meagre amount, and the learned Civil Judge has, accordingly, granted interim alimony at the rate of Rs.1,000/- for the wife and three children.

Considering the reasoning of the trial Court, in my view, no interference of this Court is called for in exercise of the extraordinary jurisdiction of this Court under Article 226/227 of the Constitution of India. Hence rejected. Rule is discharged. Interim relief stands vacated.

#. Considering the fact that the order is of 1999, it will be open to the respondent wife to apply before the learned trial Court for enhancement of the interim maintenance, as, the amount of Rs.1000/- awarded in the year 1999 is for the maintenance of wife and three minor children, which cannot be said to be sufficient considering the fact that by this time about five years have passed. If any such application is preferred, it is for the concerned court to consider the said aspect. The petitioner is directed to pay the arrears of maintenance, if any, within a period of four weeks from today.

(P.B.Majmudar,J)

(pathan)